

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
-vs-)	No. CR-10-38-R
)	
CHARLES ALAN DYER,)	
)	
Defendant.)	

**GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION IN LIMINE TO
EXCLUDE REFERENCES TO OTHER WEAPONS FOUND DURING SEARCH
OF THE DEFENDANT'S HOME**

The United States hereby responds to "Defendant's Motion in Limine"(Doc. 22) which requests the Court exclude evidence and testimony related to other weapons found during a search of the defendant's residence. In support of the motion, defendant argues that these items are irrelevant to the issues and facts of the case, and would be prejudicial to the defendant, in violation of Fed. R. Evid.401, 402, and 403.

STATEMENT OF FACTS

On February 2, 2010, a federal grand jury returned a one-count Indictment charging the defendant with possession of an unregistered destructive device, in violation of Title 26, United States Code, Section 5861(d). On January 12, 2010, sheriffs with the Stephens County Sheriffs Department executed a search warrant for DNA related to a pending felony case in Stephens County District Court, at the defendant's residence in Marlow, Oklahoma. During the execution of the search warrant, Lt. Lawson Guthrie, who

has prior military experience, observed the Colt M-203 grenade launcher charged in the Indictment in this case. Lt. Guthrie took a picture of the grenade launcher from the vantage point at which he observed it during the search. Lt. Guthrie and the other deputies left the residence without taking possession of the grenade launcher because it was not listed among the items they were allowed to seize pursuant to the warrant. Lt. Guthrie called Federal Bureau of Investigation (FBI) Special Agent Gene Pool and informed him of his discovery. SA Pool contacted Bureau of Alcohol, Tobacco, Firearms, and Explosive (ATF) Special Agent Brett Williams, and inquired into the legality of defendant's possession of this grenade launcher. SA Williams informed SA Pool that the defendant was not registered under the National Firearms Registration and Transfer Record (NFRTR) to possess this grenade launcher. Further, a query of the serial number of this grenade launcher through the NFRTR indicated that this grenade launcher was not registered to the defendant. Based on this information, SA Pool and Lt. Guthrie went back to the defendant's residence on January 13, 2010 and took possession of this device.

ARGUMENT

The defendant's motion is moot as the government does not intend to introduce evidence related to other weapons found in the defendant's home during its case-in-chief. The government does intend to introduce the photograph taken by Lt. Guthrie during the execution of the search warrant, however the government has made substantial efforts to redact the other weapons and gun related items displayed in the picture. Furthermore, the

government has instructed its witnesses to refrain from testifying about other weapons and gun related items observed, and recovered, during the search.

CONCLUSION

For the foregoing reasons, the government requests the Court deny the defendant's motion as moot.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2010 I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants: David Hammond.

s/Andre' B. Caldwell
Assistant U.S. Attorney

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